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January 20, 2023

VIA ECF

The Honorable Lewis A. Kaplan
United States District Court
Southern District of New York
Daniel Patrick Moynihan
500 Pearl Street
New York, New York 10007

Re: *Carroll v. Trump*, 20 Civ. 7311 (LAK) (JLC)

Dear Judge Kaplan:

We write in connection with the reply brief filed last night by Defendant Donald J. Trump.

As Your Honor is aware, Plaintiff E. Jean Carroll's opposition to Trump's summary judgment motion explained that Trump had waived his absolute immunity defense, which he asserted for the first time in his motion. ECF No. 113. In his reply brief, Trump all but admits that he has waived this defense and instead asserts that absolute presidential immunity can never be waived as a matter of law. ECF No. 122 at 1-5. This is a brand new legal argument, for which he identifies no controlling precedent, and we will be prepared to address it at oral argument.

Alternatively, if the Court is not inclined to hold oral argument—or if the Court would otherwise find it helpful—we would respectfully propose to file a 5-page sur-reply by January 24, 2023, concerning whether Trump's absolute immunity defense is non-waivable. *See Amusement Indus., Inc. v. Stern*, No. 07 Civ. 11586, 2010 WL 276464, at *3 (S.D.N.Y. Jan. 22, 2010).

Respectfully submitted,



Roberta A. Kaplan

cc: Counsel of Record (via ECF)